

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DAVID BRIAN MORGAN,)	
)	
Petitioner,)	
)	
v.)	No. CIV-23-1097-R
)	
DAVID ROGERS,¹)	
)	
Respondent.)	

ORDER

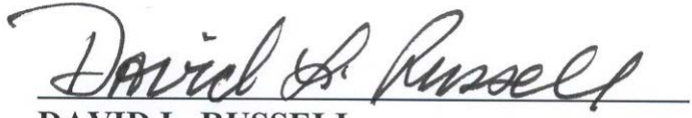
Before the Court is the Report and Recommendation of United States Magistrate Judge Suzanne Mitchell entered December 19, 2023. [Doc. 12]. No objection to the Report and Recommendation was filed by January 9, 2024, and no extension of time in which to object has been sought or granted. Therefore, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety. Petitioner's Complaint is DISMISSED WITHOUT PREJUDICE. Additionally, the Petitioner's Motion to Vacate Sentence [Doc. 10] is DENIED as MOOT.

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny of Certificate of Appealability upon entering a final adverse order. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid

¹ The Court lists the Respondent as substituted by the Magistrate Judge in her Report and Recommendation. Doc. 12 at 1 n.1.

claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). It is quite apparent Petitioner’s latest attempt at habeas relief was procedurally unsound, and therefore, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED this 18th day of January 2024.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE